

THE HONORABLE THOMAS Z. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

TINYBUILD LLC,

Plaintiff,

v.

NIVAL INTERNATIONAL LIMITED,

Defendant.

NO. 2:19-cv-00805-TSZ

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

The parties, by and through their respective counsel of record, submit this Joint Status Report and Discovery Plan pursuant to the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. 9).

1. Statement of the Nature and Complexity of the Case

Plaintiff tinyBuild brings claims of breach of contract and breach of the implied covenant of good faith and fair dealing directed to Defendant Nival's breach of a software development agreement between the parties and Nival's failure to return tinyBuild's proprietary source code.

Defendant denies tinyBuild's claims and also brings Counterclaims of breach of contract and breach of the implied covenant of good faith and fair dealing against tinyBuild in respect to the same agreement.

1 Plaintiff anticipates filing a motion to amend the Complaint to add claims of fraudulent
2 misrepresentation, theft of trade secrets, and conversion.

3 This is not a complex case, nor would it be rendered such with the addition of Plaintiff's
4 anticipated claims.

5 **2. Proposed Deadline for the Joining of Additional Parties**

6 The parties propose September 30, 2019 as the deadline for joining additional parties.

7 **3. Consent to Magistrate Judge**

8 The parties do not consent to the assignment of this case to a Magistrate Judge.

9 **4. Discovery Plan**

10 A. Initial disclosures: The parties will exchange initial disclosures on August
11 12, 2019.

12 B. Subjects, timing, and potential phasing of discovery: The parties intend to
13 conduct standard discovery on all subjects pertinent to their claims defenses under the timeframe
14 set forth in the civil rules. Phasing of discovery is not necessary.

15 C. ESI: Electronic discovery, if any, will be in accordance with the Federal
16 Rules of Civil Procedure. The parties do not anticipate complex electronic discovery and do not
17 believe the Model Protocol for Discovery of Electronically Stored Information in Civil Litigation
18 is necessary at this time.

19 D. Privilege issues: No complex or unique privilege issues are known at this
20 time.

21 E. Discovery limitations aside from those set forth in the Federal Rules of
22 Civil Procedure and the local rules are not necessary at this time.

23 F. Depending upon the type of information sought in discovery, the parties
24 may agree to a stipulated protective order.

25 **5. Views, Proposals and Agreements on LCR 26(f)(1) Subjects**
26

1 A. Prompt case resolution: Plaintiff intends to file a dispositive motion on
2 Defendant's Counterclaim. Defendant intends to file a dispositive motion in respect to all of
3 Plaintiff's claims.

4 B. Alternative Dispute Resolution: Plaintiff is willing to engage in an early
5 mediation in Seattle, Washington. Defendant is not willing to engage in early mediation.

6 C. Related cases: None.

7 D. Discovery management: The parties presently believe discovery can be
8 managed appropriately through compliance with the Federal Rules of Civil Procedure.

9 E. Anticipated discovery sought: Plaintiff's intends to seek discovery related
10 to Nival's work under the agreement, Nival's financial records related to the project, and Nival's
11 retention of tinyBuild's IP, among other topics. Defendant intends to seek discovery related to
12 tinyBuild's performance under, and compliance with, the agreement, tinyBuild's financial
13 records related to the agreement and the project, and other relevant topics.

14 F. Phasing motions: Plaintiff anticipates filing a motion to amend the
15 complaint and a dispositive motion on Defendant's Counterclaim. Defendant anticipates filing
16 a dispositive motion on Plaintiff's claims. Other than the use of dispositive motions, the parties
17 do not currently believe that phasing of motions is appropriate.

18 G. Preservation of discoverable information: The parties will endeavor to
19 preserve discoverable information and they are not presently aware of any issues concerning the
20 preservation of discoverable information.

21 H. Privilege issues: The parties do not presently anticipate any unusual issues
22 concerning privilege or work product.

23 I. Model Protocol for Discovery of ESI: The parties presently do not believe
24 the Model Protocol is necessary.

25 J. Alternatives to Model Protocol are not necessary at this time. A protective
26 order may be necessary in the future for the protection of confidential information.

6. Discovery Completion

The parties submit that the appropriate date for the discovery deadline be set 120 days prior to trial in accordance with the Federal Rules of Civil Procedure.

7. Bifurcation

The parties do not presently see a reason to bifurcate this case.

8. Pretrial Statements and Pretrial Order

Pretrial statements and pretrial orders should not be dispensed with.

9. Individualized Trial Program

The parties do not agree to the Individualized Trial Program.

10. Any Other Suggestions for Shortening or Simplifying the Case

The parties presently have no additional suggestions for shortening or simplifying the case.

11. The Date the Case Will be Ready for Trial

The parties presently believe that case will be ready for trial by August 12, 2020, or later.

12. Whether the Trial Will be Jury or Non-Jury

Plaintiff intends to make a jury demand on its claims against Nival. Defendant requests a trial by jury on all claims so triable.

13. The Number of Trial Days Requested

The parties estimate 8-10 days for trial.

14. The Names, Addresses, and Telephone Numbers of All Trial Counsel

Plaintiff's Counsel

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15. Dates on Which Trial Counsel May Have Complications to be Considered in Setting a Trial Date

Counsel for Plaintiff currently has no professional or personal commitments that would interfere with a trial date between August 12, 2020 and December 31, 2020.

Counsel for Nival currently has no professional or personal commitments that would interfere with a trial date between August 12, 2020 and December 31, 2020.

16. Statement of Service

Service on Defendant has been completed.

17. Scheduling Conference

A scheduling conference is not necessary at this time.

18. Corporate Disclosure Statements

Plaintiff filed its Corporate Disclosure Statement on May 31, 2019. Defendant filed its Corporate Disclosure Statement on July 16, 2019.

19. Video recording

The parties do not consent to video recorded hearings.

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1 DATED this 12th day of August, 2019.

2 GARVEY SCHUBERT BARER, P.C.

MANN LAW GROUP

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4 By s/Diana S. Breaux

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Attorneys for Defendant Nival International
Limited

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties who have appeared in this matter.

s/Kelly M. Mueller

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